IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.440 of 1999

Judgment reserved on 26.3.2007

Date of decision 9.4.2007

M/s New G.M. Finances Co. Appellant

Versus

Naresh Kumar Jain Respondent

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr.Janesh Gupta, Advocate.

For the respondent: Mr.O.P.Sharma, Sr. Advocate, with
Mr.M.L.Chauhan, Advocate.

V.K.Ahuja, J.

This is an appeal filed by the appellant against the judgment of acquittal passed by learned Judicial Magistrate Ist Class, Solan on 18.5.1999 dismissing the complaint filed by the appellant against the respondent under Section 138 of the Negotiable Instruments Act as amended.

Briefly stated the facts of the case are that the appellant as complainant field a complaint under Section 138 of the Negotiable Instruments Act, alleging that the accused took a loan from the complainant and a sum of Rs.17, 541.67 and Rs.30,400/- which amount was due against the accused who issued a cheque of Rs.35,000/- in favour of the complainant. The said cheque was dishonoured and after issuance of notice upon the accused/respondent the appellant filed the

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

complaint before the learned trial court who tried the accused and ultimately dismissed the complaint.

I have heard Mr.Janesh Gupta, learned counsel appearing for the appellant and Mr.O.P.Sharma, Senior Advocate assisted by Mr.M.L.Chauhan, learned counsel appearing for the respondent.

The submissions made by learned counsel for the appellant were that the application filed by the appellant under Section 311 of the Code of Criminal Procedure was wrongly dismissed by learned trial court and as such the appellant could not lead evidence. On merits it was pleaded that the findings recorded by the learned trial court are incorrect and as such are liable to be reversed.

On the other hand, learned counsel appearing for the respondent has supported the impugned judgment for the reasons recorded therein.

I have not referred to the findings recorded by learned trial court vide which the complaint was dismissed since I feel that the application filed by the appellant under Section 311 Cr.P.C. was wrongly dismissed by learned trial court and therefore the case is being remanded in that regard. A perusal of the record of the case shows that the learned trial court dismissed the application filed by the complainant/appellant under Section 311 Cr.P.C. to examine a person from the Post Office to prove the registered notice sent to the respondent, but the said application was dismissed by learned trial court having been field at a belated stage and having been filed to fill up lacunae in the case. A perusal of the impugned order shows that the learned trial court had taken two grounds for rejecting the application and that in the case arguments had been partly heard when this application was filed. The application under Section 311 Cr.P.C. can be filed at any stage, including in an appeal before the appellate court and as such I am of the opinion that the said application

deserves to be allowed and as such the order dated 18.5.1999 dismissing the said application is liable to be set aside which is set aside accordingly.

In view of the above discussion the appeal filed by the appellant is allowed and the case is remanded back to learned trial court who shall give an opportunity to the appellant to produce evidence as pleaded in the application under Section 311 Cr.P.C. and thereafter the case shall be disposed of according to law. I need not to reiterate since the case is an old one the learned trial court shall take steps to dispose of the same within four months of the date of hearing being fixed by the court.

The parties shall appear before the learned trial court on 23.4.2007 and the court shall proceed with the case as directed above.

April 9,2007(g) **(V.K.Ahuja),J.**